

of title 5, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) Judicial review

(A) In general

Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) Law applicable

Chapter 158 of title 28 shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an “agency” as that term is used in chapter 158 of title 28.

(C) Standard of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

- (i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (ii) not made consistent with required procedures; or
- (iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) Attorney’s fees

If the presidential appointee is the prevailing party in a proceeding under this section, attorney’s fees may be allowed by the court in accordance with the standards prescribed under section 2000e-5(k) of title 42.

(b) Presidential appointee

For purposes of this section, the term “Presidential appointee” means any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 1202 of this title but does not include any individual—

- (1) whose appointment is made by and with the advice and consent of the Senate;
- (2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or
- (3) who is a member of the uniformed services.

(Pub. L. 102-166, title III, § 320, Nov. 21, 1991, 105 Stat. 1096.)

REFERENCES IN TEXT

Section 3(2) of the Federal Advisory Committee Act, referred to in subsec. (b)(2), is section 3(2) of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1214, 1221, 1224 of this title.

§ 1220. Coverage of previously exempt State employees

(a) Application

The rights, protections, and remedies provided pursuant to section 1202 and 1207(h) of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

- (1) to be a member of the elected official’s personal staff;
- (2) to serve the elected official on the policy-making level; or
- (3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) Enforcement by administrative action

(1) In general

Any individual referred to in subsection (a) of this section may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) Referral to State and local authorities

(A) Application

Section 2000e-5(d) of title 42 shall apply with respect to any proceeding under this section.

(B) Definition

For purposes of the application described in subparagraph (A), the term “any charge filed by a member of the Commission alleging an unlawful employment practice” means a complaint filed under this section.

(c) Judicial review

Any party aggrieved by a final order under subsection (b) of this section may obtain a review of such order under chapter 158 of title 28. For the purpose of this review, the Equal Employment Opportunity Commission shall be an “agency” as that term is used in chapter 158 of title 28.

(d) Standard of review

To the extent necessary to decision and when presented, the reviewing court shall decide all

relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) of this section if it is determined that the order was—

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (2) not made consistent with required procedures; or
- (3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) Attorney's fees

If the individual referred to in subsection (a) of this section is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 2000e-5(k) of title 42.

(Pub. L. 102-166, title III, §321, Nov. 21, 1991, 105 Stat. 1097.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1214 of this title.

§ 1221. Severability

Notwithstanding section 401 of this Act, if any provision of section 1209 or 1219(a)(3) of this title is invalidated, both sections 1209 and 1219(a)(3) of this title shall have no force and effect.

(Pub. L. 102-166, title III, §322, Nov. 21, 1991, 105 Stat. 1098.)

REFERENCES IN TEXT

Section 401 of this Act, referred to in text, is section 401 of Pub. L. 102-166, which is set out as a note under section 1981 of Title 42, The Public Health and Welfare.

SEVERABILITY

Invalidation of any provision, amendment, or application of Pub. L. 102-166 not to affect remaining provisions, amendments, and applications, see section 401 of Pub. L. 102-166, set out as a note under section 1981 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 60m, 1214 of this title.

§ 1222. Repealed. Pub. L. 102-392, title III, § 316(b), Oct. 6, 1992, 106 Stat. 1724

Section, Pub. L. 102-166, title III, §323, Nov. 21, 1991, 105 Stat. 1098, required President or Member of Senate to reimburse appropriate Federal account for payment made on his or her behalf for violation of this chapter.

§ 1223. Reports of Senate committees

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this section are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(Pub. L. 102-166, title III, §324, Nov. 21, 1991, 105 Stat. 1099.)

§ 1224. Intervention and expedited review of certain appeals

(a) Intervention

Because of the constitutional issues that may be raised by section 1209 of this title and section 1219 of this title, any Member of the Senate may intervene as a matter of right in any proceeding under section 1209 of this title for the sole purpose of determining the constitutionality of such section.

(b) Threshold matter

In any proceeding under section 1209 of this title or section 1219 of this title, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) Appeal

(1) In general

An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 1209 or 1219 of this title.

(2) Jurisdiction

The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

(Pub. L. 102-166, title III, §325, Nov. 21, 1991, 105 Stat. 1099.)